

PLANNING BOARD OF APPEALS MINUTES

August 6, 2008

The following petitions were received and were heard by the Tiverton Planning Board of Appeals on Wednesday, August 6, 2008 at 7:30 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Vice Chairman John Jackson, Richard Taylor, Susan Krumholz, Lise Gescheidt & Raymond LaFazia.

Also present were: Vernon Gorton, Board Solicitor, Mary Ann Escobar, Court Reporter.

1. A petition has been filed by James McInnis, Trustee for Tiverton Associates Trust, appealing a decision of Christopher Spencer, Administrative Officer to the Planning Board, dated May 6, 2008 denying his Master Plan application of property on Souza Road, Tiverton, RI being Map 1-2 Block 92 Card 9 on Tiverton Tax Assessor's maps and located in a R40 zoning district.

Decision: Attorney James Spear appeared before the Board representing Mr. McInnis. Mr. Spear requested that Ms. Gescheidt recuse herself based upon a letter to which she wrote the planning board regarding the New England Development master plan in 2005. He felt that Ms. Gescheidt was biased against any commercial development for this parcel of land. Ms. Gescheidt declined to recuse herself stating that for the New England Development matter she appeared before the Planning Board as a private citizen of the Town of Tiverton, and she does not have any ant-commercial bias relative to this matter.

Attorney Spear wished to introduce new evidence into the record by calling Attorney Brady to testify. Ms. Gescheidt made a motion to not accept any new evidence, as they are only to review the record and make a decision based on the record only. Attorney Taylor seconded. The Vote was unanimous. Voting were: Vice Chairman Jackson, Richard Taylor, Susan Krumholz, Lise Gescheidt & Raymond LaFazia.

Attorney Spear wanted to introduce exhibits into the record. The Board declined to introduce such records as Mr. Spear did not comply with their rules and forward them to the Board seven days prior to the hearing.

Attorney Spear gave the zoning board a brief overview of the proposal that was submitted to the administrative officer when the project was filed. He stated that this was a concurrent filing for a concept plan review and master plan review to develop what is called a village center. The development would have been 247,500 square feet which is approximately 27,500 square feet less than the New England Development proposal after it was scaled down from its original 335,000 square feet. Seven acres of the proposal were set aside as land for a municipal campus, including 10,300 square feet for a municipal building as well as 14,308 square feet for a senior center.

The design approach, which was one that the town had indicated they wanted to see there, was a village and Main Street approach. No big boxes were included in the proposal. In fact, there are no buildings in excess of 40,000 square feet. The commercial center includes office space for local businesses, medical buildings, banking, retail as well as a restaurant.

When the proposal was put together prior to filing, Mr. McInnis reviewed the entire record and proceedings from the New England Development project, gathered together all of the things that the community through its various elected and appointed officials indicated that they wanted to see at the site and incorporated all of those recommendations, took all the things that the town thought would be objectionable and tried to come up with a new proposal that would satisfy all of the criteria for the various elements and constituents within the community.

The argument that Mr. Spear expressed is that the letter from Mr. Spencer was based upon prejudicial procedural error, clear error and lack of support by weight of the evidence. Attorney Spear stated that he had five arguments relative to this appeal. They are as follows:

1. The first argument is that the application that was submitted and rejected was a concurrent filing for a concept plan review and a master plan review. This is an accepted practice in Tiverton. An applicant like Mr. McInnis relied upon that practice and was prejudiced by the administrative officer's refusal to accept the application consistent with past practices of the planning board.
2. The second argument is that the applications could not be rejected by the administrative officer. They can only be ruled complete or deficient.
3. The third argument is that the pre-application conference which in this case was the informal concept plan review was not scheduled within 60 days of the filing made by Mr. McInnis and, therefore, the need for that review no longer exists.
4. The fourth argument is that the concept plan review which is the pre-application conference only benefits the applicant and the town is not prejudiced by accepting the master plan application before holding the pre-application conference.
5. The fifth argument is that the law itself does not prohibit the acceptance of a master plan application prior to the pre-application meeting. It only speaks to the issue of when the review of the master plan can begin.

Attorney Jeanne Scott appeared before the Board representing Christopher Spencer. She stated that past practices have no bearing on what's before the board tonight.

This board's jurisdiction is to review the record and not to take new evidence or testimony. Ms. Scott gave the board a memorandum of law which basically is a review of the statutes and ordinances that are germane to this issue

Attorney Scott stated that the administrative officer correctly rejected the application of Mr. McInnis because he failed to have a pre-application meeting prior to filing the application. The words of a statute or ordinance should be construed to mean what the words generally mean. And pre-application means pre-application. It means pre-applying.

Rhode Island General Laws 45-23-35A provides that one or more pre-application meetings shall be held for all major land development or subdivision applications. In contrast, an administrative or minor development pre-application meeting may be held.

They are required and are mandatory for a major land development such as the one that is proposed by Mr. McInnis. 45-23-39 Section E states that the pre-application meeting or at least one is required before there is an application filed and the exact language says "provided that at least one pre-application meeting has been held for major land development for a subdivision application or 60 days have elapsed from the filing of the pre-application submission and no pre-application meeting has been scheduled to occur within the 60 days nothing shall be deemed to preclude an applicant from thereafter filing and proceeding with an application. The language is clear. It says that at least one pre-application meeting has to be held and thereafter a filing can be made.

The Tiverton ordinances closely followed this language. 23-26 of the Tiverton code Part B states that a major plan review shall consist of three stages of review following this pre-application meeting specified in section 23-13. And 23-13 follows the statutory language that at least one pre-application conference/informal concept plan review shall be held for all major land development or subdivision project. 23-13A delineates the purpose of the pre-application meeting and that is to facilitate the subsequent review of a proposed development or subdivision.

The Board went into Executive Session to discuss the matter. Attorney Gescheidt made a motion to continue until September 3 for control purposes and to pick a date for October, so the Board can have time to review this matter and make a decision. Attorney Krumholz seconded and requested that any memorandums be filed 14 days prior to the October hearing date.

Whereupon the hearing concluded at 9:42 p.m.

PBA: mae

C E R T I F I C A T E

I, Mary Ann C. Escobar, Registered Professional Reporter, hereby certify that the foregoing 3 pages are transcribed to the best of my knowledge, skill & ability.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 30th day of August, 2008.

Mary Ann C. Escobar, RPR